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5 **UNITED STATES DISTRICT COURT**
6 **SOUTHERN DISTRICT OF CALIFORNIA**
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8 ALEJANDRO CAPDEVIELLE, an
9 individual; ALEJANDRO CAPDEVIELLE,
10 an alleged entity; DAMARIS
CAPDEVIELLE, an individual; DAMARIS
CAPDEVIELLE, an alleged entity,

11 Plaintiffs,

12 vs.

13 GOLDEN WEST SAVINGS
14 ASSOCIATION SERVICE CO., a
California corporation; WORLD
15 SAVINGS, INC., a California corporation;
ROBERT D. NOWLEN and TERI L.
16 NOWLEN, alleged entitles; all individual
or entities claiming any legal right, title,
17 estate, lien or interest in the property
described in the complaint adverse to
18 plaintiff's interest, and all other claims an
interest in the real property known or
19 unknown; DOES and Does 1-50,
inclusive,

20 Defendants.
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CASE NO. 08CV0754-LAB (JMA)

**ORDER GRANTING IN PART
DEFENDANTS' MOTION TO
DISMISS AND REMANDING
ACTION TO STATE COURT**

[Dkt No. 3]

22 This action arises from foreclosure activity against Plaintiffs' real property. Plaintiffs
23 are proceeding *pro se* with a Verified Complaint ("Complaint") filed March 13, 2008 in San
24 Diego County Superior Court claiming, *inter alia*, violations of the federal Fair Debt
25 Collections Practices Act, 15 U.S.C. § 1692 ("FDCPA").¹ They named as defendants World
26 Savings Bank, FSB (now known as Wachovia Mortgage FSB) ("World Savings"), Golden
27

28 ¹ Plaintiffs attempt to set forth six causes of action, denominated: Declaratory Judgment;
Injunctive Relief; Accounting; Cancellation of Instruments; Claim in Recoupment; and Quiet Title.

1 West Savings Association Service Co. ("Golden West"), two individuals, and "All Individuals
2 Or Entities Claiming Any Legal Right, Title, Estate, Lien Or Interest In the [Real] Property
3 Described In The Complaint Adverse To Plaintiff's [*sic*] Interest." On or about April 3, 2008,
4 before they appeared in the action, Plaintiffs voluntarily dismissed the two individuals,
5 leaving only World Savings and Golden West (collectively "Defendants"). Defendants were
6 served on April 1, 2008. On April 24, 2008, before appearing in the state court action,
7 Defendants removed this action to federal court, asserting federal question jurisdiction
8 pursuant to 28 U.S.C. § 1331, based on Plaintiffs' FDCPA claims. This matter is before the
9 court on Defendants' Motion To Dismiss for failure to state a claim upon which relief can be
10 granted (FED. R. CIV. P. ("Rule") 12(b)(6)) and, alternatively, for an Order requiring a more
11 definite statement (Rule 12(e)). Pursuant to Civil Local Rule 7.1(d)(1), the court finds the
12 issues presented appropriate for decision on the papers and without oral argument.

13 Defendants criticize the detailed Complaint as drafted in a manner obscuring the
14 discrete legal claims sought to be asserted. The Complaint contains numerous references,
15 quotations, and conceptual expositions amounting to opinion and commentary rather than
16 articulating cognizable causes of action. Defendants characterize it as "incomprehensible"
17 and lacking any basis for the court to grant relief. Mot. 2:3-5. As parsed by Defendants, it
18 "does appear to be fairly certain from the complaint . . . that these *pro se* plaintiffs are facing
19 foreclosure of a trust deed on their property (e.g., Complaint ¶¶ 22, 24, and 25, and Exhibit
20 B) and they want to stop the foreclosure (e.g., Complaint ¶ 121)." Mot. 2:7-10. Defendants
21 contend "with one potential exception, . . . none of these causes allege[s] a legally sufficient
22 ground for granting plaintiffs any relief, be that halting the foreclosure process, an
23 accounting, or any of the other myriad forms of relief" they may be seeking. Mot. P&A 2:16-
24 20. The "one potential exception" they identify is associated with Plaintiffs' scattered
25 allusions in the Complaint to the FDCPA. Defendants demonstrate that theory offers no
26 exception to the absence of any legally sufficient ground for granting Plaintiffs any relief. If
27 Defendants are correct Plaintiffs cannot state a claim for FDCPA violations against them,
28 then the court finds no ground for federal jurisdiction survives the Motion.

1 In response to the Motion, Plaintiffs filed papers denominated "Plaintiffs' Request And
 2 Affidavit Of Default Against Debt Collector For Unfair Debt Collection Practices Act
 3 Violations."² Dkt No. 5. The filing attempts a "Plain Statement of Facts" purporting to trace
 4 the procedural history of what appears to be communications they initiated with Defendants
 5 beginning in February 2008 to obtain "validation and information" regarding "the alleged
 6 debt." Dkt No. 5, ¶¶ 4-6. They characterize Defendants as "debt collectors," they contend
 7 "the alleged debt is not valid," and they argue the FDCPA requires debt collectors to cease
 8 all collection activity until they send a certified verification of the alleged debt as required by
 9 the FDCPA, as Plaintiffs state they had requested. Dkt No. 5, ¶¶ 7-8. Plaintiffs represent
 10 in their filing responsive to the Motion: "Defendants are attempting to unlawfully and illegally
 11 evict [Plaintiffs] from their real property subject of suit on or about June 19, 2008 by the use
 12 of fraud, legal trickery and deceit by organized RICO usurious lending schemes designed
 13 by operators, agents, trustees who use the cover of bank entities to disguise the methods
 14 of stealing [Plaintiffs'] equity in the real property." Dkt No. 5, ¶ 9. Specifically, Plaintiffs
 15 argue Defendants are in "default" of their obligation to provide them with "full disclosure
 16 regarding the nature and cause of Debt Collector's claim concerning the . . . alleged debt by
 17 failing to verify the alleged debt in accordance with applicable California and Federal laws."
 18 Dkt No. 5, ¶ 23. Plaintiffs' entire argument hinges on the status of these Defendants as
 19 "debt collectors."

20 The court construes the "Affidavit" as Plaintiffs' Opposition to the Motion, including
 21 their attempt to redress Defendants' criticisms the Complaint is pled in a manner antithetical
 22 to the Rule 8 admonition federal pleading standards are satisfied by a "short and plain
 23 statement of the claim showing that the pleader is entitled to relief." Rule 8(a)(b). In
 24 anticipation the court would construe Plaintiffs' filing as their Opposition to the Motion,
 25 Defendants filed a Response to the Affidavit *in lieu* of a Reply to Opposition. Dkt No. 4. The

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 27 ² The court's reading of that filing convinces it the "default" allusion is associated with their
 28 contention Defendants failed to abide by various FDCPA requirements, in particular, that a debt
 collector cease all collection activity until it has responded to the alleged debtors' demand for a
 verification of the debt. "Default" in the judicial procedure sense of failure to respond to a complaint
 clearly does not apply in this case.

1 motion briefing is accordingly complete. Defendants contend the Affidavit does not and
2 cannot cure the fatal defects in the attempted pleading of FDCPA claims against these
3 Defendants. They contend that by statutory definition, neither entity's role or conduct falls
4 within the FDCPA's definition of "debt collector" or "debt collection activities," and World
5 Savings/Wachovia is specifically exempt from operation of that statute as "the originator of
6 the debt that is attempting to collect a debt owed to it." Dkt No. 4, p. 2.

7 The court finds the issue dispositive of the Motion also divests this court of jurisdiction
8 over this dispute. For purposes of avoiding Rule 12(b)(6) dismissal, plaintiffs must allege a
9 set of facts which, if established, gives rise to one or more enforceable legal rights.
10 Goldstein v. North Jersey Trust Co., 39 F.R.D. 363, 366 (S.D.N.Y. 1966). Even under the
11 liberal pleading standards in federal courts, plaintiffs must still allege a cognizable legal
12 theory and facts sufficient to support the theory. Balistreri v. Pacifica Police Dept., 901 F.2d
13 696, 699 (9th Cir. 1990). If the legal theory is predicated on a federal statute, plaintiffs
14 cannot prevail as a matter of law if the named defendants and the conduct alleged to give
15 rise to the cause of action do not fall within the definitions and scope of that law.

16 When determining whether a complaint states a claim, the court accepts all
17 allegations of material fact in the complaint as true and construes them in the light most
18 favorable to the non-moving party. Cedars-Sinai Medical Center v. National League of
19 Postmasters of U.S., 497 F.3d 972, 975 (9th Cir. 2007). However, the Court is "not required
20 to accept as true conclusory allegations which are contradicted by documents referred to in
21 the complaint," and does "not . . . necessarily assume the truth of legal conclusions merely
22 because they are cast in the form of factual allegations." Warren v. Fox Family Worldwide,
23 Inc., 328 F.3d 1136, 1139 (9th Cir. 2003) (citations and quotation marks omitted). As
24 material for purposes of deciding this Motion, Plaintiffs contend Defendants have violated
25 their rights protected by the FDCPA associated with a trust deed lien placed against their
26 property to secure a loan.

27 To state a cause of action under the FDCPA, an essential element is that the named
28 defendants be in fact "debt collectors" as that term is defined in the statute, and be without

1 any statutory exemption from the operation of the codified obligations imposed on debt
2 collection practices. Normally, in deciding a Motion To Dismiss under FED. R. CIV. P.
3 12(b)(6), the court does not look beyond the pleading and attachments to the pleading.
4 Marder v. Lopez, 450 F.3d 445, 448 (9th Cir. 2006). However, the court may take judicial
5 notice of "matters of public record" and of documents necessarily relied on for the statement
6 of a claim. Smith v. Duncan, 297 F.3d 809, 815 (9th Cir. 2002); United States v. Ritchie, 342
7 F.3d 903, 908 (9th Cir.2003). The court may also consider matters going to the exercise of
8 its jurisdiction over the parties and subject matter of the dispute giving rise to the litigation.
9 In this case, the court considers the entity status of the named defendants, as substantiated
10 in the Complaint and the Motion exhibits.

11 The Certificate Of Corporate Existence provided as Exhibit 1 to Defendants' Motion
12 substantiates World Savings was chartered under the laws of the United State to transact
13 the business of a Federal savings bank, and as of April 21, 2006 was "operating as a BIF-
14 insured financial institution. Exhibit 2 to the Motion is a November 19, 2007 letter from the
15 office of Thrift Supervision, Department of the Treasury, confirming World Savings changed
16 its name to Wachovia Mortgage and the location of its home office, but the institution
17 continued to meet the same requirements. Applying the federal debt collection practices law
18 and definitions to these Defendants, the court concludes neither qualifies as a "debt
19 collector" bound by the procedural standards codified in the FDCPA to protect consumers
20 from unscrupulous or harassing debt collection practices under which Plaintiffs attempt to
21 state their federal claim.

22 The Complaint exhibits and Defendants' Motion briefing substantiate World Savings
23 was the originator of Plaintiffs' debt and is the foreclosing beneficiary trying to collect a debt
24 owed to it under deed of trust recorded to secure the loan.³ The FDCPA expressly exempts

26 ³ "[A]s shown by the exhibits to the Complaint, Wachovia was the original lender on two
27 separate loans to plaintiff; one for \$350,000, secured by a senior deed of trust [Complaint, Exhibit
28 B2 at Paragraphs I(C) and I(D)] and one for a line of credit in the amount of \$23,500, secured by a
junior deed of trust (Complaint, Exhibit B3, first page, last paragraph). Per Exhibit B to the complaint,
Wachovia was the foreclosing beneficiary, and therefore was 'the originator fo a debt trying to collect
a debt owed to it.' " Resp. To Affidavit 2:20-26.

1 such loan originators from any requirement they comply with that statute (including but not
 2 limited to the requirement that respond to demands for "validation of the debt" from Plaintiffs)
 3 because they are not "debt collectors" within the meaning of the statute. 15 U.S.C. §
 4 1692a(6)(A);⁴ see Thomasson v. Bank One, Louisiana, N.A., 137 F.Supp.2d 721, 723-24
 5 (E.D.La 2001). As such, World Savings can have no FDCPA liability to these Plaintiffs.
 6 Golden West's only role appears to be serving as the trustee under the deed of trust. A
 7 trustee under a deed of trust effectuating nonjudicial foreclosures of property in that capacity
 8 does not engage in "debt collection activities" within the meaning of the FDCPA. See Hulse
 9 v. Ocwen Federal Bank, FSB, 195 F.Supp.2d 1188, 1204 (D.Or. 2002). As neither of these
 10 moving Defendants can be brought within the purview of the FDCPA for the conduct alleged
 11 in the Complaint associated with their attempts to foreclose on original debts secured by
 12 deeds of trust for which they were the originators and trust beneficiaries, leave to amend the
 13 Complaint to attempt to state such a cause of action against either Defendant would be
 14 futile, and the FDCPA claims against them are dismissed with prejudice. The court cannot
 15 exercise supplemental or any other theory of jurisdiction over any of the state law claims
 16 alleged in the Complaint absent a jurisdictional basis to proceed in federal court.

17 However, not all Plaintiffs' prolix pleading necessarily arises from the alleged FDCPA
 18 violations. Accordingly, although the court finds Plaintiffs have failed to state a claim for
 19 FDCPA violations upon which relief can be granted, and the court **GRANTS** the motion to
 20 dismiss to the extent (only) that federal statutory basis for their action fails to state a claim,
 21 the court expresses no opinion on the merits of any other of Plaintiffs' potential theories of
 22 recovery. While Defendants' argument that all the state law claims alleged in the Complaint
 23 are preempted by the federal Home Owners' Loan Act, 12 U.S.C. §§ 1461 *et. seq.* ("HOLA")
 24 may be well-taken, this court expresses no opinion on the matter. The determination
 25 whether a case "arises under" federal law is unaffected by matters raised in an answer or
 26 a counterclaim. Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc., 535 U.S. 826,

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 28 ⁴ The term "debt collector" does not include: "(A) any officer or employee of a creditor while,
 in the name of the creditor, collecting debts for such creditor." 15 U.S.C. § 1692a(6)(A); see also
 FDCPA 1692a(g)(F)(ii) (codifying an originator exception to the definition of "debt collector").

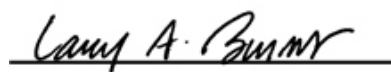
1 830, n. 2 (2002) (the "well pleaded complaint" rule "has long governed whether a case
2 'arises under' federal law for purposes of § 1331," as well as "whether a case is removable
3 from state to federal court pursuant to 28 U.S.C. § 1441(a)"). A defendant's allegation of
4 federal preemption accordingly does not confer original federal subject matter jurisdiction
5 over a Complaint from the face of which federal subject matter jurisdiction is lacking.
6 Moreover, the court would decline to comb the pleading Defendants describe as "32 pages
7 of text and 80+ pages of exhibits, the vast majority of which is totally incomprehensible" (Mot.
8 P&A 1:28-2:1) to extract possible claims under state law that could be cognizable despite
9 HOLA. When an alleged claim does not "arise under" federal law, courts do not permit the
10 complaint to be amended to allege some different claim to try to save federal jurisdiction, but
11 rather it must be dismissed. Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 830-31
12 (1989) (defects in the jurisdictional facts themselves, as opposed to an incorrect manner of
13 alleging jurisdiction, cannot be cured by amendment).

14 Applying those principles, no basis for federal subject matter jurisdiction survives this
15 Motion, and further proceedings in this court are thus unauthorized. These parties must
16 return to the state court from which Defendants removed this action to sort out their
17 remaining disputes. Defendants may reassert their HOLA defenses, and must seek any
18 other relief such as a more definite statement, there.

19 For all the foregoing reasons, **IT IS HEREBY ORDERED** the Motion is **GRANTED**
20 **IN PART**, disposing of the federal statutory claims, divesting this court of jurisdiction over the
21 action, and the court accordingly *sua sponte* **REMANDS** the action to state court, terminating
22 this action in its entirety. **IT IS FURTHER ORDERED** the Motion hearing presently
23 scheduled for July 7, 2008 ***off-calendar as moot.***

24 **IT IS SO ORDERED.**

25 DATED: June 30, 2008

26 

27 **HONORABLE LARRY ALAN BURNS**
28 **United States District Judge**